

109TH CONGRESS
2D SESSION

H. R. 6289

To establish a program to provide financial incentives for the establishment of interactive personal health records.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2006

Mr. KENNEDY of Rhode Island introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish a program to provide financial incentives for the establishment of interactive personal health records.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Personalized Health
5 Information Act of 2006”.

6 **SEC. 2. PERSONAL HEALTH RECORD (PHR) INCENTIVE**
7 **PROGRAM.**

8 (a) ESTABLISHMENT.—The Secretary of Health and
9 Human Services (in this section referred to as the “Sec-

1 retary”) shall establish a program (in this section referred
2 to as the “program”) to provide financial incentives for
3 the establishment of interactive qualifying personal health
4 records for Medicare and other patients and their health
5 care providers in order to—

6 (1) provide patients (or their authorized rep-
7 resentatives) access to and control over their per-
8 sonal health data and information and educational
9 information so as to become healthier and more in-
10 formed and engaged health care consumers;

11 (2) make available to authorized health care
12 providers a more accurate minimum data set of pa-
13 tient information at all points of care;

14 (3) protect patient security and privacy;

15 (4) improve patients’ adherence to evidence-
16 based care guidelines, preventive care, and screening
17 protocols, thereby improving health outcomes and
18 lowering health care costs;

19 (5) improve medication adherence by patients,
20 thereby improving health outcomes and lowering
21 health care costs;

22 (6) provide patients with more accurate, timely,
23 and appropriate information related to their health
24 care benefits and related administrative information;

1 (7) improve the quality and efficiency of com-
2 munication between health care providers and pa-
3 tients;

4 (8) create a direct communications channel to
5 patients in the event of health emergencies; and

6 (9) provide access with appropriate privacy
7 safeguards to de-identified health care information
8 to evaluate and advance public health and health re-
9 search goals.

10 (b) INCENTIVE PAYMENTS.—

11 (1) IN GENERAL.—Under the program, each
12 qualified physician (as defined in subsection (c))
13 that has a qualifying patient (as defined in sub-
14 section (d)) shall receive an incentive payment from
15 the PHR Incentive Fund established under sub-
16 section (f). In the case of such a patient of more
17 than one physician, each such physician (who does
18 not share in the same group practice, as defined by
19 the Secretary, with another qualifying physician of
20 that patient) may receive such a payment.

21 (2) AMOUNT OF PAYMENT.—

22 (A) IN GENERAL.—Except as otherwise
23 provided, the amount of the incentive payment
24 to a qualifying physician under the program

1 shall be at least \$2 per year for each qualifying
2 patient of the physician.

3 (B) ADJUSTMENT; LIMITATION.—The Sec-
4 retary shall annually retrospectively set the in-
5 centive payment amount based on the amount
6 of the contributions into the PHR Incentive
7 Fund. The Secretary shall pay PHR incentives
8 payments only from such Fund.

9 (C) ANNUAL LIMITATION.—The Secretary
10 shall establish a maximum annual payment
11 under this section to any qualifying physician.

12 (3) DURATION.—Payments shall be made under
13 the program during a 3-year period beginning on the
14 date of implementation of the program, except that
15 the Secretary may continue the program for an addi-
16 tional two years if the Secretary determines that
17 continuation of the program for such period would
18 be a cost-effective way of achieving the goals of this
19 Act.

20 (4) PROGRAM EDUCATION.—

21 (A) PUBLICATION OF NAMES QUALIFYING
22 PHYSICIANS.—In order to assist patients in
23 identifying health care providers that use quali-
24 fying personal health records, Secretary shall
25 publish on the official website for the Centers

1 for Medicare & Medicaid Services (CMS), or
2 other online locations of the Secretary's choos-
3 ing, a list of qualifying physicians who partici-
4 pate in the Medicare program and who have re-
5 ceived incentive payments under this section.

6 (B) EDUCATION.—

7 (i) PATIENT EDUCATION.—The Sec-
8 retary shall, in consultation with appro-
9 priate organizations that represent health
10 care consumers, take steps to educate
11 Medicare beneficiaries and other patients
12 about the health and convenience benefits
13 of qualifying personal health records.

14 (ii) PROVIDER EDUCATION.—The Sec-
15 retary shall take steps to educate Medicare
16 providers about the patient, provider and
17 overall health care benefits of using quali-
18 fying personal health records.

19 (c) QUALIFIED PHYSICIAN DEFINED.—For purposes
20 of this section, the term “qualified physician” means a li-
21 censed physician (or other licensed health care provider,
22 such as a clinic, designated by the Secretary) that meets
23 the following requirements, with respect to a qualifying
24 patient of that physician and the qualifying personal
25 health record of that patient:

1 (1) The physician (or provider) uses the QPHR
2 for electronic patient registration for encounters, in-
3 cluding taking demographic information, insurance
4 information, medication list, problems list, family
5 history, and other information included within the
6 QPHR.

7 (2) The physician (or provider) implements
8 policies to authenticate the patient's identities pur-
9 suant to standards established by the Secretary in
10 order to enable the QPHR to receive electronic data
11 feeds from appropriate third party sources, such as
12 pharmacies, pharmacy benefit managers, labora-
13 tories, and health plans, including the Medicare pro-
14 gram.

15 (3) The physician (or provider), or authorized
16 representative, updates the diagnosis and medication
17 list (including all current medications and new medi-
18 cations prescribed or provided as samples) in the
19 QPHR after each patient encounter, if appropriate
20 and authorized by the patient, either by direct entry
21 or through a data sharing arrangement using an ap-
22 propriate electronic means, such as an electronic
23 medical record or e-prescribing.

24 (4) The physician (or provider) uses the QPHR
25 as appropriate and authorized by the patient to com-

1 municate appropriate patient education and care
2 management messages.

3 (5) There is submitted to the Secretary by the
4 physician (or by the administrator of the QPHR on
5 the physician's behalf) on a regular basis, but no
6 less frequently than annually, a report documenting
7 the number of such qualifying patients of the physi-
8 cian (or provider) and the use of QPHRs of such pa-
9 tients.

10 (6) The physician (or provider) meets other re-
11 quirements as the Secretary may establish.

12 (d) QUALIFYING PATIENT DEFINED.—For purposes
13 of this section, the term “qualifying patient” means an
14 individual for whom a qualifying personal health record
15 has been established and is in operation under the pro-
16 gram and who is a Medicare beneficiary or is covered
17 under a health benefits or other plan the sponsor of which
18 is participating as a Fund partner under this section.

19 (e) QUALIFYING PERSONAL HEALTH RECORD
20 (QPHR).—

21 (1) DEFINITION.—For purposes of this section,
22 the terms “qualifying personal health record” and
23 “QPHR” mean a record of health care related infor-
24 mation that meets the following requirements:

25 (A) CONTROL.—

1 (i) IN GENERAL.—The record is con-
2 trolled solely by the patient (or the pa-
3 tient’s authorized representative), with the
4 patient (or the patient’s authorized rep-
5 resentative) able to access online, print,
6 copy to electronic media, or provide online
7 access to authorized third parties, includ-
8 ing health care providers, to all individ-
9 ually identifiable health information held in
10 the record at any time.

11 (ii) ACCESS RIGHTS.—The record
12 guarantees the control of the patient (or
13 the patient’s authorized representative)
14 over who accesses the patient’s individually
15 identifiable information contained in the
16 record.

17 (iii) TERMINATION RIGHTS.—The
18 record allows a patient to terminate the
19 further use of the record service at any
20 time, including elimination of the patient’s
21 personal health information in the control
22 of the administrator of the record. Nothing
23 in this clause shall require a health care
24 provider to eliminate a patient’s personal

1 health information that is in a medical
2 record maintained by the provider.

3 (iv) TRANSPORTABILITY.—The pa-
4 tient’s rights to control of the record under
5 this subparagraph are not affected by
6 changes in relationships with particular
7 providers or health plans.

8 (B) SECURITY.—The record meets min-
9 imum security standards, including the rules
10 promulgated under section 264(e) of the Health
11 Insurance Portability and Accountability Act of
12 1996 (HIPAA) and other such minimum stand-
13 ards as identified by the Secretary under para-
14 graph (2), and the administrator of the record
15 complies with any security and privacy stand-
16 ards, policies, and practices adopted under such
17 paragraph.

18 (C) INTEROPERABILITY.—The record com-
19 plies with interoperability data standards speci-
20 fied by the Secretary, to ensure the capability
21 to integrate with other QPHRs and other
22 sources of individual data, such as electronic
23 health records, pharmacies, pharmacy benefit
24 managers, and health plans.

1 (D) WEB-BASED.—The record is web-
2 based and capable of sharing information be-
3 tween patients and their providers, and ena-
4 bling patient-provider communication.

5 (E) MESSAGING CAPABILITIES.—

6 (i) EDUCATION REMINDERS.—Subject
7 to clause (v), the record is capable of send-
8 ing patient-specific patient education, re-
9 minders, and clinical messages to patients
10 based upon data in the record, but such
11 messages shall not be sent unless such
12 messages comply with standards adopted
13 under paragraph (3). The Secretary shall
14 work with the Secretary of Homeland Se-
15 curity and the Director of the Centers for
16 Disease Control and Prevention to opti-
17 mize the public health and emergency re-
18 sponse capabilities of the networks created
19 by QPHRs.

20 (ii) FEDERAL REMINDERS.—Subject
21 to clause (v), the record provides for the
22 sending on behalf of Federal agencies of
23 objective, accurate, patient-specific mes-
24 sages to patients concerning their health
25 care or benefits, but such messages shall

1 not be sent unless the messages comply
2 with standards adopted under paragraph
3 (3).

4 (iii) FUND PARTNER MESSAGES.—
5 Subject to clause (v), the record provides
6 for the sending, on behalf of Fund part-
7 ners who contribute to the Fund, appro-
8 priate patient-specific messages to con-
9 sumers (with whom such partners have
10 pre-existing relationships) concerning the
11 patients' health care, medications, treat-
12 ments, medical devices or benefits, but
13 such messages shall not be sent unless
14 such messages comply with standards
15 adopted under paragraph (3).

16 (iv) HEALTH PLAN NOTIFICATION.—
17 The QPHR service notifies, no less fre-
18 quently than quarterly, each Fund partner
19 that administers a health benefit plan of
20 the individuals who are enrolled in the plan
21 and who have a QPHR established.

22 (v) LIMITATION ON COMMERCIAL SO-
23 LICITATION.—The record does not allow
24 any commercial solicitations, marketing, or
25 messages to patients unless the patient is

1 a patient or beneficiary of the sender, uses
2 the sender's product with a prescription or
3 recommendation of a provider, or has some
4 other pre-existing relationship (as defined
5 by the Secretary), or other messages that
6 do not comply with standards adopted
7 under paragraph (3), and the record en-
8 sures that every message clearly identifies
9 the source of the content.

10 (vi) PATIENT OPT-OUT.—The record
11 allow a patient (or patient's authorized
12 representative) to opt out of receiving mes-
13 sages entirely or from particular sources.

14 (F) PUBLIC HEALTH ANALYSIS AND RE-
15 SEARCH.—The record is capable of providing
16 de-identified data for public health analysis and
17 for research purposes. The Secretary shall con-
18 sult with the Commissioner of the Food and
19 Drug Administration, the Director of the Na-
20 tional Institutes of Health, the Director of the
21 Centers for Disease Control and Prevention,
22 and the Administrator of the Agency for
23 Healthcare Research and Quality to optimize
24 the public health and post-market surveillance
25 capabilities of the networks created by QPHRs.

1 (2) PRIVACY AND CONSUMER PROTECTION
2 STANDARDS.—

3 (A) IN GENERAL.—The Secretary shall set
4 minimum security, privacy and data use stand-
5 ards for QPHRs, in addition to such standards
6 as required under regulations promulgated
7 under section 264(e) of the Health Insurance
8 Portability and Accountability Act of 1996
9 (HIPAA), in order to optimally protect and
10 safeguard patient health care information.

11 (B) CONSUMER PROTECTION BOARD.—The
12 Secretary shall establish a consumer protection
13 board, a majority of whose members represent
14 health care consumers, including individuals
15 with chronic diseases and with mental and ad-
16 dictive disorders. Such board shall—

17 (i) recommend to the Secretary min-
18 imum standards to protect patient-identifi-
19 able information stored in or transmitted
20 from a QPHR;

21 (ii) recommend procedures to ensure
22 the objectivity, relevance, and accuracy of
23 messages sent to patients via their
24 QPHRs; and

1 (iii) have the right to request and re-
2 view the security and privacy capabilities,
3 policies and practices of those entities ad-
4 ministering QPHRs.

5 (3) MESSAGE STANDARDS.—The Secretary
6 shall establish minimum standards to ensure the ob-
7 jectivity, accuracy and relevance of messages sent to
8 individual patients under paragraph (1)(E) from a
9 QPHR and to protect against the use of such
10 records by Fund partners for commercial solicita-
11 tions or marketing. Such standards shall incorporate
12 existing standards established by the Food and Drug
13 Administration or other Federal agencies.

14 (f) PHR INCENTIVE FUND.—

15 (1) IN GENERAL.—The Secretary shall establish
16 a PHR Incentive Fund (in this section referred to
17 as the “PHR Incentive Fund” or “Fund”). The
18 Fund may receive contributions from Fund partners
19 for the sole purpose of paying PHR incentives under
20 subsection (a), conducting annual studies under sub-
21 section (g), and otherwise carrying out the program.

22 (2) FUNDING PARTNERS.—

23 (A) IN GENERAL.—The Secretary may
24 enter into contracts with public or private pay-
25 ers, drug manufacturers, device manufacturers,

1 or other public or private entities (in this sec-
2 tion referred to as “Fund partners”) to allow
3 the Fund to receive contributions in accordance
4 with this subsection and other terms deter-
5 mined by the Secretary.

6 (B) FEDERAL PARTNERS.—The Secretary
7 shall seek the involvement and contributions of
8 the Food and Drug Administration, the Centers
9 for Disease Control and Prevention, the Agency
10 for Healthcare Research and Quality, and the
11 Department of Homeland Security to maximize
12 the effectiveness of the QPHRs in meeting the
13 health, national security, emergency response,
14 biosurveillance, and research goals of the Fed-
15 eral government in a manner consistent with
16 this Act.

17 (C) PARTNER ACCOUNTS.—The Fund shall
18 include an account for each Fund partner, in-
19 cluding Medicare, separately accounting for
20 each Fund partner’s contributions to the Fund.
21 Incentive payments shall be debited from each
22 account in accordance with this subsection.
23 Amounts in the account of a Fund partner that
24 are not paid in fiscal year remain available for

1 payment from such account in the subsequent
2 fiscal year.

3 (D) CONTRIBUTION LEVELS.—Contribu-
4 tion levels to the Fund by Fund partners shall
5 be set annually by the Secretary, except that
6 the contribution level for the first year shall be
7 as follows:

8 (i) MEDICARE CONTRIBUTION.—The
9 Secretary shall contribute \$2 for each
10 Medicare beneficiary for whom any PHR
11 incentive payment is made during such
12 year by transferring the appropriate
13 amount from the Medicare trust funds
14 under parts A and B of the Medicare pro-
15 gram, in such proportion as the Secretary
16 may specify.

17 (ii) FDA-MESSAGING CONTRIBU-
18 TIONS.—Each manufacturer shall con-
19 tribute \$2 for each qualifying patient for
20 each medication adherence program for
21 which one or more messages are sent
22 under subsection (e)(1)(E)(iii) in the year.

23 (iii) OTHER CONTRIBUTIONS.—Any
24 other fund partner shall contribute \$2 for
25 each qualifying patient for whom a PHR

1 incentive payment is made, except that the
2 Secretary may establish other contribution
3 levels for device manufacturers or other
4 Fund partners that employ messages sent
5 under subsection (e)(1)(D)(iii).

6 (E) CHARGING FUND PARTNERS.—Each
7 Fund partner’s account shall be debited accord-
8 ing to the same formula with which contribu-
9 tions were determined. In the event that a
10 Fund partner’s account does not have a suffi-
11 cient balance to cover the Fund partner’s liabil-
12 ity, the Fund partner shall make a supple-
13 mental contribution to the Fund to cover the
14 shortfall plus such penalty as the Secretary may
15 assess.

16 (F) LIMITATION ON BENEFITS.—Contribu-
17 tions by a Fund partner to the Fund shall con-
18 fer no preferential access to data or information
19 or any other benefit to the partner other than
20 public acknowledgment under paragraph (5)
21 and the ability to have messages sent to quali-
22 fying patients under subsection (e)(1)(D)(iii).

23 (3) PUBLICATION OF FUND CONTRIBUTORS.—

24 The Secretary shall publish on the official website of

1 the Centers for Medicare & Medicaid Services a list
2 of Fund partners that have contributed to the Fund.

3 (g) ANNUAL STUDY.—

4 (1) IN GENERAL.—The Secretary shall provide
5 for an annual study to assess changes patient en-
6 gagement in their QPHR, behavior changes, changes
7 in health outcomes, and cost savings resulting from
8 implementation of the program. The study shall in-
9 clude collection of aggregate data documenting the
10 number of qualifying patient, number and kind of
11 messages sent to patients, the percentage of mes-
12 sages opened by patients, and other measures of the
13 program’s effectiveness.

14 (2) FUNDING.—There are available from the
15 PHR Incentive Fund not to exceed \$2,000,000 each
16 year to pay for the annual study under paragraph
17 (1). Amounts so used shall be debited from each
18 Fund partner’s account on a pro-rata basis.

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